

For Commission Use Only:

Case: 06-0761

AMENDED

## FORMAL COMPLAINT

Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, Illinois 62701

# ORIGINAL

### OFFICIAL FILE

### ILLINOIS COMMERCE COMMISSION

Regarding a complaint by (Person making the complaint): Apps Communications, Inc.

Against (Utility name): Illinois Bell Telephone

As to (Reason for complaint) Breach of contract for telecommunications service,  
fraudulent billing, fraudulent contracting

Sandwich, Orland Park,  
in Naperville Illinois.

#### TO THE ILLINOIS COMMERCE COMMISSION, SPRINGFIELD, ILLINOIS:

My mailing address is Law Offices of John Krupa  
64 Orland Sq. Dr #316 Orland Park, IL 60467

The service address that I am complaining about is 111 W. Franklin Ave, Naperville, IL 60540 and

My home telephone is [708] 403-9200

Between 8:30 A.M. and 5:00 P.M. weekdays, I can be reached at [708] 349-4737

(Full name of utility company) Illinois Bell Telephone (respondent) is a public utility and is subject to the provisions of the Illinois Public Utilities Act.

In the space below, list the specific section of the law, Commission rule(s), or utility tariffs that you think is involved with your complaint.

220 ILCS 5/13-514(6), 5/9-252, 5/10-108

CHIEF CLERK'S OFFICE  
2007 JUN -51 A 9 40  
ILLINOIS COMMERCE COMMISSION

Have you contacted the Consumer Services Division of the Illinois Commerce Commission about your complaint?

☒ Yes ☐ No

Has your complaint filed with that office been closed?

☐ Yes ☒ No

Please state your complaint briefly. Number each of the paragraphs. Please include time period and dollar amounts involved with your complaint. Use an extra sheet of paper if needed.

See attached affidavit

Please clearly state what you want the Commission to do in this case:

Require AT & T to honor terms of contract as written, including endpoints of telecommunication lines and billing terms.

Date: 6-4-07  
(Month, day, year)

Complainant's Signature [Signature]

If an attorney will represent you, please give the attorney's name, address, and telephone number.

You need to file the original with the Commission. Also, provide one copy for each utility complained about (referred to as respondents).

#### VERIFICATION

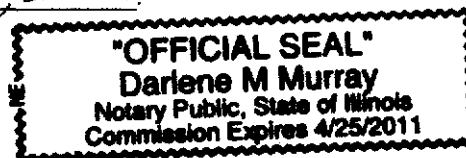
A notary public must witness the completion of this part of the form.

I, David Apps, first being duly sworn, say that I have read the above petition and know what it says.  
The contents of this petition are true to the best of my knowledge.

(Signature) [Signature]

Subscribed and sworn/affirmed to before me on (month, day, year) June 4, 2007

Darlene M Murray  
Notary Public, Illinois



**NOTE:** Failure to answer all of the questions on this form may result in this form being returned without processing. If you have questions, please call the counselor in the Consumer Services Division that handled your informal complaint.

## ILLINOIS COMMERCE COMMISSION AMENDED COMPLAINT

NOW COMES your Complainant, APPS COMMUNICATION, INC., and in support of its complaint against IBT, states as follows:

### COUNT I

#### Fraud Regarding Verizon Contract

1. APPS COMMUNICATION, INC., (hereinafter referred to as "AppsCorp"), is an Illinois Corporation in good standing. The corporation is solely owned by Dave Apps, and for the purposes of this Complaint, Dave Apps is and was the only authorized agent to contract with any other parties regarding telecommunications services.
2. Illinois Bell Telephone (hereinafter referred to as "IBT") is a corporation and a telecommunications provider, licensed under the laws of the State of Illinois and governed by the rules of the Illinois Commerce Commission. IBT currently owns the contract at issue in this matter.
3. On or about April 19, 2005, AppsCorp entered into a written contract with IBT.
4. The written contract specifically states the terms of the agreement between the parties, namely: 1) AppsCorp and IBT are the parties to the contract, 2) AppsCorp agrees to pay to IBT the sum on Two Hundred Eighty-Seven Dollars and 99/100 (\$287.99) per month for sixty (60) months plus an additional non-recurring charge of Fifty Dollars and NO/100 (\$50.00), and 3) IBT shall install and provide a new DS1 telecommunications line as one circuit at FCC2 Rate for sixty (60) months from 111 West Franklin Avenue, Naperville, Illinois 60540 to 2600 U.S. Route 34 East, Sandwich, Illinois 60548. (See Attached Exhibit "A").

5. IBT drafted the contract. The contract is a form contract, with only the substantive issues set forth in paragraph 4 above subject to negotiation, while IBT requires the remainder of the terms and conditions of the contract be accepted without change.
6. Subject to Illinois law, traditional contract interpretation principles require that:

"an agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence." Western Illinois Oil Co. v. Thompson, 26 Ill. 2d 287, 291, 186 N.E.2d 285 (1962).
7. This approach is sometimes referred to as the "four corners" rule. URS Corp. v. Ash, 101 Ill. App. 3d 229, 234, 56 Ill. Dec. 749, 427 N.E.2d 1295 (1981). Further, this contract must be interpreted in a light most favorable to the non-drafting party, namely AppsCorp.
7. Pursuant to the terms of the contract, at no place does IBT state that IBT needed an additional contract signed by AppsCorp to install and manage the DS1 telecommunications line.
8. Pursuant to the terms of the contract, at no place does IBT state that IBT would have the power to act as AppsCorp's agent for entering into any contracts with other telecommunications providers.
9. Pursuant to the terms of the contract, at no place does IBT state that IBT would bill additional sums to AppsCorp or incur liability on AppsCorp's behalf for additional sums to be billed to AppsCorp to install and manage the DS1 telecommunications line.
10. On or about April 12, 2005 IBT installed the DS1 telecommunications line from 111 West Franklin Avenue, Naperville, Illinois 60540 to 2600 U.S. Route 34 East, Sandwich, Illinois 60548.
11. This DS1 telecommunications line functioned without issue or problem, and has functioned without issue to date.

12. Beginning August 7, 2006, AppsCorp's agent received a telecommunications bill from Verizon. (See Attached Group Exhibit "B").
13. Prior to this date, AppsCorp only received monthly bills from IBT, AppsCorp contested the incorrect billing for the monthly bills, paid the monthly bills to prevent shut-off, and no delinquency has ever existed. (See Attached Group Exhibit "B").
14. Prior to the receipt of the Verizon bill on August 7, 2006, AppsCorp never negotiated with, executed a contract with, or had any contact with Verizon regarding the installation and maintenance of a DS1 telecommunications line from 111 West Franklin Avenue, Naperville, Illinois 60540 to 2600 U.S. Route 34 East, Sandwich, Illinois 60548.
15. On or about March 27, 2006, AppsCorp's agent initiated contact to IBT's agent, Walter Bradford regarding the previously unknown Verizon billing. (See Attached Group Exhibit "C").
16. On or about March 30, 2006, AppsCorp's agent talked with IBT's agent, Walter Bradford regarding the Verizon billing. Walter Bradford indicated he would order the contract from Verizon to verify the service.
17. On or about March 30, 2006, AppsCorp received from IBT's agent Mandy M. Gilson an email with attached contracts for service. The attached contracts did not cover any service with Verizon, and the email specifically states that Mandy M. Gilson would order the Verizon contract. (See Attached Email Exhibit "D").
18. A few other telephone conversations and email conversations occurred between IBT's agent Walter Bradford and AppsCorp's agent regarding documentary proof regarding the disclosure of the Verizon contract. Ultimately, IBT's agent Walter Bradford indicated that

he notified AppsCorp through email of the additional charges from Verizon. (See Attached Group Exhibit "E").

19. The follow-up conversation resulted in AppsCorp's agent initiating a detailed email to IBT's agent Walter Bradford setting forth the facts that the contract never states additional charges were to be incurred through Verizon, no email was sent by IBT's agent to AppsCorp regarding the additional charges, AppsCorp never signed a contract with Verizon, and Mandy Gilson from IBT signed a contract on AppsCorp's behalf with Verizon.
20. Despite repeated requests, IBT has never disclosed any emails showing proof on notification of incurring Verizon telecommunications charges.
21. Despite repeated requests, IBT has never disclosed any contract between IBT that indicates the incurring of additional Verizon telecommunications charges.
22. Despite repeated requests, IBT has never disclosed the alleged contract between AppsCorp and Verizon.
23. IBT entered into a contract with AppsCorp for service it could not legally provide.
24. IBT made representations to AppsCorp to induce it to enter into a contract for services it could not legally provide.
25. IBT knew that it could not provide the services set forth in the contract pursuant to the terms of the contract.
26. IBT knew that AppsCorp would have no knowledge that IBT could not legally provide the services set forth in the contract.
27. IBT knew AppsCorp would reasonable rely upon IBT's disclosure of the types of service it could provide and that the terms of the contract were for services that IBT could actually provide.

28. AppsCorp could and did reasonably rely upon the disclosures of IBT regarding the services it could provide.

29. IBT has committed a fraud upon AppsCorp.

30. AppsCorp has sustained actual damages due to IBT's fraudulent conduct, including but not limited to, loss of service to its customers, attorney's fees, employee hours to correct a problem not caused by AppsCorp, lowered credit rating, and loss of reputation.

WHEREFORE the Complainant, APPS COMMUNICATION, INC., respectfully requests as follows:

- A. That this Commission hold that IBT committed a fraud against the Complainant;
- B. That this Commission require IBT to comply with the terms of the contract entered into between IBT and the Complainant for the specific rates and amounts therein;
- C. That this Commission award the Complainant against IBT damages for IBT's fraudulent conduct; and,
- D. For such other and further relief as this Commission deems reasonable and just.

#### COUNT II

Fraud Regarding DS1 Line Acct #HCGS.930548.LB

NOW COMES the Complainant, APPS COMMUNICATION, INC., and in support of its Complaint against IBT, states as follows:

1. APPS COMMUNICATION, INC., (hereinafter referred to as "AppsCorp"), is an Illinois Corporation in good standing. The corporation is solely owned by Dave Apps, and for the purposes of this Complaint, Dave Apps is and was the only authorized agent to contract with any other parties regarding telecommunications services.
2. Illinois Bell Telephone (hereinafter referred to as "IBT") is a corporation and a telecommunications provider, licensed under the laws of the State of Illinois and governed by

the rules of the Illinois Commerce Commission. IBT currently owns all of the assets, debts, and contractual obligations of SBC, including the contract at issue in this matter.

3. On or about August 2006, AppsCorp entered into a Letter of Subscription with IBT for the purposes of becoming a Certified Local Exchange Carrier (CLEC). This agreement would allow AppsCorp to buy telecommunications services on a wholesale basis from IBT and retail those services to its own customers.
4. The Letter of Subscription was extensively negotiated (See attached Exhibit "F"), with changes made from both sides, resulting in the Letter of Subscription. (See attached exhibit "G").
5. Pursuant to IBT's request, AppsCorp forwarded the original, signed Letter of Subscription to IBT. (See attached email as Exhibit "H").
6. Pursuant to the terms of the Letter of Subscription, IBT was to submit the Letter of Subscription for final approval by government authorities, then the Letter of Subscription would become a contract between the parties on the same terms.
7. After AppsCorp's submission of the Letter of Subscription, approval was granted to AppsCorp to do business as a CLEC prior to December 2006.
8. AppsCorp also has a long-standing collocation agreement with XO Communications, Inc. (hereinafter referred to as "XO") whereby AppsCorp can maintain computers at XO's main office at 140 S. Dearborn, Chicago, IL, can connect high-speed telecommunications lines to XO's backbone at any of XO's outlying offices in the Chicago-Metro area—including but not limited to 152 S. York St., Elmhurst, IL—and XO will connect the outlying office to AppsCorps computers at the main office in Chicago. This agreement allows AppsCorp to



shorten any distance for the installation of a high-speed telecommunications lines, lessening the costs to AppsCorp.

9. Prior to being authorized to do business as a CLEC, AppsCorp never cross-connected high-speed communications lines between IBT and XO. AppsCorp would purchase high-speed telecommunications lines from XO if the line would be connecting with XO, and would purchase high-speed telecommunications lines from IBT if the line would connect with IBT.
10. On or about December, 2005 AppsCorp entered into a written contract with IBT for a high-speed telecommunications line that would terminate with XO and not IBT.
11. This line would be the first cross-connect between an IBT line with XO.
12. AppsCorp purchased this line from IBT to cross-connect to XO because AppsCorp would be receiving a significant discount upon the services from IBT with AppsCorp's new standing as a CLEC. In particular, the normal charge per mile would drop from \$13.90 per mile to \$3.75 per mile, the connection charge for each end of the line would drop from \$48.75 each to \$20.00 each, the line charge would drop from \$97.00 to \$90.00, and all non-recurring charges would be waived. (See attached Letter of Subscription as Exhibit "G").
13. Furthermore, if AppsCorp had ordered the high-speed telecommunications line under IBT's retail "Chicago Metro Blast" promotion, the rates still would be higher than AppsCorp's CLEC rates, namely \$10 per mile with non-recurring charges instead of \$3.75 with waived non-recurring charges.
14. The written contract specifically states the terms of the agreement between the parties, namely: 1) AppsCorp and IBT are the parties to the contract, 2) AppsCorp agrees to pay to IBT the sum on Two Hundred Sixty-Three Dollars and 90/100 (\$263.90) per month for sixty (60) months plus an additional non-recurring charge of One Hundred Ninety-Nine Dollars

and NO/100 (\$199.00), and 3) IBT shall install and provide a new DS1 telecommunications line as one circuit at FCC2 Rate for sixty (60) months from 152 South York Street, Elmhurst, Illinois 60126 to 590 Supreme Drive, Bensenville, Illinois 60106. (See Attached Exhibit "T").

15. IBT drafted the contract. The contract is a form contract, with only the substantive issues set forth in paragraph 4 above subject to negotiation, while IBT requires the remainder of the terms and conditions of the contract be accepted without change.

16. Subject to Illinois law, traditional contract interpretation principles require that:

"an agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence." Western Illinois Oil Co. v. Thompson, 26 Ill. 2d 287, 291, 186 N.E.2d 285 (1962).

This approach is sometimes referred to as the "four corners" rule. URS Corp. v. Ash, 101 Ill. App. 3d 229, 234, 56 Ill. Dec. 749, 427 N.E.2d 1295 (1981). Further, this contract must be interpreted in a light most favorable to the non-drafting party, namely AppsCorp.

17. On or about December, 2005, IBT installed the DS1 telecommunications line from 152 South York Street, Elmhurst, Illinois 60126 to 590 Supreme Drive, Bensenville, Illinois 60106.

18. This DS1 telecommunications line functioned without issue or problem, and has functioned without issue to date.

19. Beginning from the first bill received from IBT for the DS1 telecommunications line, IBT has never billed the correct amount for the DS1 telecommunications line. (See Attached Group Exhibit "J"). IBT's billing shows that AppsCorp's CLEC rates governed the high-speed telecommunications line at issue in this case because IBT had assigned a reference number of HGCS.930548.LB. The "HGCS" references a high-speed communications line

under AppsCorp's CLEC, whereas a reference number beginning with "DHZA" would be a retail purchase from IBT using regular retail rates.

20. In particular, IBT began: 1) under code #CZ4X4, billing \$48.75 per end of line instead of \$20.00; 2) under code #TZ4X2, billing \$97.00 instead of \$90.00; and, 3) under code #1YZX4, billing \$13.90 per mile instead of \$3.75 per mile.

21. AppsCorp initiated communications with IBT through its agent via email regarding the incorrect charges for the line. A meeting occurred on February 22, 2006 whereby AppsCorp and IBT's agent discussed the billing issues, in particular that fact that AppsCorp's CLEC rates did not apply to this high-speed telecommunications line because the line terminated with XO, another CLEC, instead of with IBT. AppsCorp then inquired whether moving the termination point from XO's Elmhurst location to Orland Park would change the billing rate to those under the AppsCorp's CLEC. IBT's agent informed AppsCorp's agent that AppsCorp could authorize a change in the location of the termination point of the DS1 telecommunications line from XO's Elmhurst, IL location to AppsCorp's primary office in Orland Park, Illinois, thus allowing the rates of AppsCorp's CLEC to control and shortening the distance between the two ends of the line. However, AppsCorp would have to pay a move fee for the transfer of the end point. AppsCorp indicated it would review the matter to make sure their client would suffer minimal downtime and would then place the change order. (See attached April 5, 2006 email as Exhibit "K").

22. AppsCorp subsequently placed the change order sometime in April 2006 and the change of the termination point of the Elmhurst line was changed to Orland Park some time in the end of May, beginning of June 2006. (See attached email as Exhibit "K").

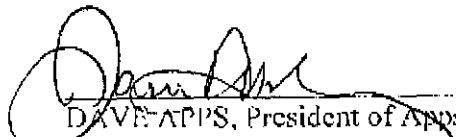
23. After the change of the termination of the line, AppsCopr received billing from IBT that continued to bill at the incorrect amounts, not reducing the charges to the rates set forth with AppsCorp's CLEC, not including the one-time charges related to the switch of the termination point—which also should have been waived pursuant to the terms of AppsCorp's CLEC—and increasing the mileage distance charged for the line.
24. AppsCorp contested the incorrect billing for the monthly bills, paid the monthly bills to prevent shut-off, and no delinquency has ever existed. (See attached Exhibit "J").
14. AppsCorp and IBT had numerous email conversations regarding the status of the change, the charges for the change, and the completion of the change. (See attached email as Exhibit "L").
15. After the completion of the change, IBT did not apply the CLEC billing rates for AppsCorp.
16. IBT's agent Walter Bradford knew, that the only way IBT could increase its rate on the existing DS1 telecommunications line would be to convince AppsCorp to move the termination point of the DS1 telecommunications line so IBT could invoke the provisions of the written contract regarding moving of an endpoint of the line as a basis to reset the rate charged for the line and increase the mileage distance of the line.
25. IBT made representations to AppsCorp to induce it to move one end of the DS1 telecommunications line from the Elmhurst, Illinois location to Orland Park, Illinois.
26. IBT knew it could not charge, nor justify any increase in charge for the existing DS1 telecommunications line because of the terms of the existing written contract between the parties unless AppsCorp authorized a move of one end of the DS1 telecommunications line from the Elmhurst, Illinois location to Orland Park, Illinois.

27. IBT knew that AppsCorp would have no knowledge that IBT could not legally make the required increase to the billing without AppsCorp authorizing the move of one end of the DS1 telecommunications line from the Elmhurst, Illinois location to Orland Park, Illinois.
28. IBT knew AppsCorp would reasonable rely upon IBT's disclosure regarding the result of the moving of the DS1 telecommunications line from the Elmhurst, Illinois location to Orland Park, Illinois.
29. AppsCorp could and did reasonably rely upon the disclosures of IBT regarding the results of the moving of the DS1 telecommunications line from the Elmhurst, Illinois location to Orland Park, Illinois.
30. IBT has committed a fraud upon AppsCorp.
17. AppsCorp has sustained actual damages due to IBT's fraudulent conduct, including but not limited to, loss of service to its customers, attorney's fees, employee hours to correct a problem not caused by AppsCorp, additional unnecessary charges to its account, lowered credit rating, and loss of reputation.

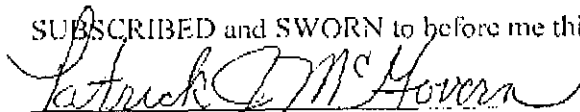
WHEREFORE the Complainant, APPS COMMUNICATION, INC., respectfully prays for as follows:

- A. That this Commission hold that IBT committed a fraud against the Complaint;
- B. That this Commission require IBT to comply with the terms of the contract entered into between IBT and the Complaint for the specific rates and amounts therein;
- C. That this Commission award the Complainant against IBT damages for IBT's fraudulent conduct; and,

D. For such other and further relief as this Commission deems reasonable and just.

  
DAVE APPS, President of Apps  
Communication, Inc.

SUBSCRIBED and SWORN to before me this 27<sup>th</sup> day of March, 2007.

  
NOTARY PUBLIC



Prepared By:  
Law Offices of John A. Krupa  
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